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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1806

RIN 1505-AA91

Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Interim rule with request for comment.

SUMMARY: The Department of the Treasury is issuing a revised interim rule implementing the Bank Enterprise Award Program (BEA Program), administered by the Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury. This revised interim rule reflects requirements set forth in a final rule, published by the Department of the Treasury (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, December 19, 2014), hereafter referred to as the Uniform Administrative Requirements. The Uniform Administrative Requirements constitute a government-wide framework for grants management codified by the Office of Management and Budget (OMB); they combine several OMB guidance circulars aimed at reducing administrative burden for award Recipients and reducing the risk of waste, fraud and abuse of Federal financial assistance. The Uniform Administrative Requirements establish financial, administrative, procurement, and program management standards with which Federal award-making programs, including those administered by the CDFI Fund, and Recipients must comply. This revised BEA Program

interim rule includes revisions necessary to implement the Uniform Administrative Requirements, as well as to make certain technical corrections and other updates to the current rule.

DATES: Effective [insert date of publication in the FEDERAL REGISTER]; written comments must be received by the offices of the CDFI Fund on or before July 3, 2015.

ADDRESSES: You may submit comments concerning this revised interim rule via the Federal e-Rulemaking Portal at <http://www.regulations.gov> (please follow the instructions for submitting comments). All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at <http://www.cdfifund.gov>.

FOR FURTHER INFORMATION CONTACT: Robert Ibanez, Program Manager, Community Development Financial Institutions Fund, at bea@cdfi.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The CDFI Fund, Department of the Treasury, was authorized by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). The mission of the CDFI Fund is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The BEA Program provides awards to depository institutions, insured by the Federal Deposit Insurance Corporation (FDIC), that demonstrate an increase in their activities in the form of loans, investments, services, and Technical Assistance, in Distressed Communities and provide financial assistance to Community

Development Financial Institutions (CDFIs) through grants, stock purchases, loans, deposits, and other forms of financial and Technical Assistance.

Through the BEA Program, the CDFI Fund seeks to: strengthen and expand the financial and organizational capacity of CDFIs; provide monetary awards to insured depository institutions that increase their lending and financial services in Distressed Communities; and increase the flow of private capital into Low- and Moderate-Income areas. Applicants participate in the BEA Program through a competitive application process, in which the CDFI Fund evaluates applications based on the value of their increases in certain Qualified Activities. BEA Program award Recipients receive award proceeds in the form of a grant after successful completion of specified Qualified Activities.

On January 30, 2009, the CDFI Fund published in the Federal Register an interim regulation (74 FR 5790) implementing the BEA Program. The deadline for submission of comments was March 2, 2009.

II. Comments on the January 30, 2009 Interim Rule

As of the close of the March 2, 2009 comment period, the CDFI Fund received no comments on the current rule.

III. Summary of Changes

(A) Section 1806.102, Relationship to other programs: This section has been revised to clarify that the restrictions on entities applying for, receiving, and using BEA Program Award in conjunction with awards through other CDFI Fund programs, will be described in the applicable notice of funding opportunity for each program. This section also prohibits Applicants from submitting any transactions as Qualified Activities if they are funded in whole or in part with award proceeds from another CDFI Fund program or other Federal program.

(B) Section 1806.103, Definitions: Throughout the revised interim rule, the defined term “Awardee” has been replaced by “Recipient” and the term “disbursement” has been replaced with the term “payment” as it relates to award funds being transmitted from the CDFI Fund to the Recipient. These changes were made to align the terminology in the BEA Program regulations with the terms used in the Uniform Administrative Requirements, 2 CFR part 1000.

The term “CDFI Partner” is revised in subsection 1806.103 to prohibit a CDFI Partner from being an affiliated organization of the Applicant. “Community Development Entity” has been removed from the definition section because such term is not used in this part. The term “Development Service Activities” is now defined in subsection 1806.103. “Geographic Units” is revised in subsection 1806.103 to align with the updated terminology used by the U.S. Bureau of the Census. “Home Improvement Loan” is revised in subsection 1806.103 to ensure that the borrower meets the definitions of Low- and Moderate-Income. “Individual Development Account” is revised in subsection 1806.103 to provide for more flexibility and is now less prescriptive. “Insured Depository Institution” is defined in subsection 1806.103. “Integrally Involved” is revised in subsection 1806.103 to reflect that the definition no longer applies to non-CDFIs. The term “Small Dollar Consumer Loan,” added as an eligible activity in the definition of “Distressed Community Financing Activities” (subsection 1806.103), has been defined in subsection 1806.103. “State” is defined in subsection 1806.103. The term “Targeted Financial Services” is revised in subsection 1806.103 to reflect that such term must be targeted to Eligible Residents that meet Low- and Moderate-Income requirements. The term “Technical Assistance” is now defined in subsection 1806.103.

(C) Subsection 1806.104(a), Uniform Administrative Requirements: Subsection 1806.104(a) has been added to assert that the Uniform Administrative Requirements are applicable to BEA Program Awards.

(D) Subpart B: The title of Subpart B has been revised from “Awards” to “Eligibility” and describes the basic application requirements that an Applicant must meet in order to receive a BEA Program Award. The former content of Subpart B, dealing with the specifics of how a Recipient’s award amount is determined, is now located in Subpart D “Award Determinations,” with new content in Section 1806.400 describing the period from which an Applicant’s increases in Qualified Activities will be measured. The addition of this new section caused the numbering of subsequent sections to change.

(E) Subpart C: The title of Subpart C has been revised to “Use of Funds/Qualified Activities,” describes the eligible uses of a BEA Program Award, and identifies restrictions on the use of award dollars set forth in Section 1806.301. The former Subpart C, “Terms and Conditions of Assistance,” is now designated as Subpart E.

(F) Subpart D: In Subpart D, Section 1806.404(c), the priority of awards has been adjusted to provide the CDFI Fund with the discretion to cap, in the applicable Notice of Funding Availability (NOFA), the maximum amount of funding available for the Distressed Community Financing Activities category. The three Qualified Activities are prioritized based on the type of Qualified Activity, as well as the type of Applicant (meaning, CDFI versus non-CDFI). Section 1806.404(c) makes clear that in each Qualified Activity, a CDFI Applicant will be prioritized over a non-CDFI Applicant. The restrictions on the use of award dollars also apply to Qualified Activities, as set forth in Section 1806.402(d).

(G) Subpart E: Subpart E has been revised by adding a new paragraph (subsection 1806.500(a)(5)) to accommodate the audit requirements of the Uniform Administrative Requirements, and it provides a general description of the report types to be collected from Recipients on an annual basis. Specific reporting requirements, using OMB Paperwork Reduction Act (PRA) approved information collections, will be described in the applicable NOFAs and Award Agreements. In addition, this subsection has been revised to require the submission of annual reports within 90 days of the Recipients' fiscal year end, per the Uniform Administrative Requirements. Section 1806.501, previously reserved, has been deleted which resulted in the subsequent sections being renumbered.

IV. Rulemaking Analysis

A. Executive Order (E.O.) 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The collections of information contained in this revised interim rule have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 and assigned the applicable OMB Control Number associated with the CDFI Fund under 1559-0005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a valid control number assigned by OMB. The revised interim rule imposes collections of new information, for which the CDFI Fund has OMB approval.

D. National Environmental Policy Act

The revised interim rule has been reviewed in accordance with the CDFI Fund's Environmental Quality regulations (12 CFR Part 1815), promulgated pursuant to the National Environmental Protection Act of 1969 (NEPA), which requires that the CDFI Fund adequately consider the cumulative impact that proposed activities have upon the human environment. It is the determination of the CDFI Fund that the revised interim rules does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the NEPA and the CDFI Fund Environmental Quality regulations, neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Administrative Procedure Act

Because the revisions to this revised interim rule relate to grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

F. Comment

Public comment is solicited on all aspects of this interim regulation. The CDFI Fund will consider all comments made on the substance of this interim regulation, but it does not intend to hold hearings.

G. Catalog of Federal Domestic Assistance Number

Bank Enterprise Award Program— 21.021.

List of Subjects in 12 CFR Part 1806

Banks, banking, community development, grant programs— housing and community development, reporting and recordkeeping requirements, savings associations.

For the reasons set forth in the preamble, 12 CFR part 1806 is revised to read as follows:

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Sec.

Subpart A—General Provisions

- 1806.100 Purpose.
- 1806.101 Summary.
- 1806.102 Relationship to other programs.
- 1806.103 Definitions.
- 1806.104 Uniform Administrative Requirements; Waiver authority.
- 1806.105 OMB control number.

Subpart B—Eligibility

- 1806.200 Applicant eligibility.

Subpart C—Use of funds/Qualified Activities

- 1806.300 Qualified Activities.
- 1806.301 Restrictions on use of award.

Subpart D—Award Determinations

- 1806.400 General.
- 1806.401 Community eligibility and designation.
- 1806.402 Measuring and reporting Qualified Activities.
- 1806.403 Estimated award amounts.
- 1806.404 Selection process; actual award amounts.
- 1806.405 Applications for BEA Program Awards.

Subpart E—Terms and Conditions of Assistance

- 1806.500 Award Agreement; sanctions.
- 1806.501 Compliance with government requirements.
- 1806.502 Fraud, waste, and abuse.
- 1806.503 Books of account, records, and government access.
- 1806.504 Retention of records.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321.

Subpart A - General Provisions

§ 1806.100 Purpose.

The purpose of the Bank Enterprise Award (BEA) Program is to provide grants to Insured Depository Institutions that provide financial and technical assistance to Community Development Financial Institutions and increase their activities in Distressed Communities.

§ 1806.101 Summary.

Through the BEA Program, the CDFI Fund will provide monetary awards in the form of grants to Applicants selected by the CDFI Fund that increase their investments in or provide other support of CDFIs, increase their lending and investment activities in Distressed Communities, or increase their provision of certain services and assistance. Distressed Communities must meet minimum geographic, poverty, and unemployment criteria. Applicants are selected to receive BEA Program Awards through a merit-based, competitive application process. The amount of a BEA Program Award is based on the increase in Qualified Activities that are carried out by the Applicant during the Assessment Period. BEA Program Awards are disbursed by the CDFI Fund after the Recipient has successfully completed projected Qualified Activities. Each Recipient will enter into an Award Agreement, which will require it to abide by terms and conditions pertinent to any assistance received under this part, including the requirement that BEA Program Award proceeds must be used for Qualified Activities, as well as the Uniform Administrative Requirements, as applicable. All BEA Program Awards are made subject to funding availability.

§ 1806.102 Relationship to other programs.

(a) Restrictions on applying for, receiving and using BEA Program Awards in conjunction with awards under other programs administered by the CDFI Fund (including, but not limited to, the Capital Magnet Fund, the CDFI Program, the CDFI Bond Guarantee Program,

the Native American CDFI Assistance Program, and the New Markets Tax Credit Program) are as set forth in the applicable notice of funding opportunity or Notice of Allocation Availability.

(b) Prohibition against double funding. Qualified Activities may not include transactions funded in whole or in part with award proceeds from another CDFI Fund program or Federal program.

§ 1806.103 Definitions.

For purposes of this part, the following terms shall have the following definitions:

Act means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

Affordable Housing Development Loan means origination of a loan to finance the acquisition, construction, and/or development of single- or multi-family residential real property, where at least 60 percent of the units in such property are affordable, as may be defined in the applicable NOFA, to Eligible Residents who meet Low- and Moderate-Income requirements;

Affordable Housing Loan means origination of a loan to finance the purchase or improvement of the borrower's primary residence, and that is secured by such property, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements. Affordable Housing Loan may also refer to second (or otherwise subordinated) liens or “soft second” mortgages and other similar types of down payment assistance loans, but may not necessarily be secured by such property originated for the purpose of facilitating the purchase or improvement of the borrower's primary residence, where such borrower is an Eligible Resident who meets Low- and Moderate-Income requirements;

Applicant means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

Appropriate Federal Banking Agency has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

Assessment Period means an annual or semi-annual period specified in the applicable NOFA in which an Applicant will carry out, or has carried out, Qualified Activities;

Award Agreement means a formal agreement between the CDFI Fund and a Recipient pursuant to §1806.500;

Bank Enterprise Award (or BEA Program Award) means an award made to an Applicant pursuant to this part;

Bank Enterprise Award Program (or BEA Program) means the program authorized by section 114 of the Act and implemented under this part;

Baseline Period means an annual or a semi-annual period specified in the applicable NOFA, in which an Applicant has previously carried out Qualified Activities;

CDFI Partner means a CDFI that has been provided assistance in the form of CDFI Related Activities by an unaffiliated Applicant;

CDFI Related Activities means Equity Investments, Equity-Like Loans and CDFI Support Activities;

CDFI Support Activity means assistance provided by an Applicant or its Subsidiary to a CDFI that meets criteria set forth by the CDFI Fund in the applicable NOFA and that is Integrally Involved in a Distressed Community, in the form of the origination of a loan, Technical Assistance, or deposits if such deposits are:

- (1) Uninsured and committed for a term of at least three years; or
- (2) Insured, committed for a term of at least three years, and provided at an interest rate that is materially (in the determination of the CDFI Fund) below market rates;

Commercial Real Estate Loan means an origination of a loan (other than an Affordable Housing Development Loan or Affordable Housing Loan) that is secured by real estate and used to finance the acquisition or rehabilitation of a building in a Distressed Community, or the acquisition, construction and or development of property in a Distressed Community, used for commercial purposes;

Community Development Financial Institution (or CDFI) means an entity that has been certified as a CDFI by the CDFI Fund as of the date specified in the applicable NOFA;

Community Development Financial Institutions Fund (or CDFI Fund) means the Community Development Financial Institutions Fund established pursuant to Section 104(a)(12 U.S.C. 4703(a)) of the Act;

Community Services means the following forms of assistance provided by officers, employees or agents (contractual or otherwise) of the Applicant:

(1) Provision of Technical Assistance and financial education to Eligible Residents regarding managing their personal finances;

(2) Provision of Technical Assistance and consulting services to newly formed small businesses and nonprofit organizations located in the Distressed Community;

(3) Provision of Technical Assistance and financial education to, or servicing the loans of, homeowners and homeowners who are Eligible Residents and meet Low- and Moderate-Income requirements;

(4) Other services provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in a Distressed Community, as deemed appropriate by the CDFI Fund;

Deposit Liabilities means time or savings deposits or demand deposits. Any such deposit must be accepted from Eligible Residents at the offices of the Applicant or of the Subsidiary of the Applicant and located in the Distressed Community. Deposit Liabilities may only include deposits held by individuals in transaction accounts (e.g., demand deposits, negotiable order of withdrawal accounts, automated transfer service accounts, and telephone or preauthorized transfer accounts) or non-transaction accounts (e.g., money market deposit accounts, other savings deposits, and all time deposits), as defined by the Appropriate Federal Banking Agency;

Development Service Activities means activities that promote community development and are integral to the Applicant's provision of financial products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the financial products or Financial Services of the Applicant. Development Service Activities include financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills.

Distressed Community means a geographically defined community that meets the minimum area eligibility requirements specified in section 1806.401 and such additional criteria as may be set forth in the applicable NOFA;

Distressed Community Financing Activities means: Affordable Housing Loans, Affordable Housing Development Loans and related Project Investments; Education Loans; Commercial Real Estate Loans and related Project Investments; Home Improvement Loans; Small Business Loans and related Project Investments; and Small Dollar Consumer Loans;

Education Loan means an advance of funds to a student who is an Eligible Resident, for the purpose of financing a college or vocational education;

Electronic Transfer Account (or ETA) means an account that meets the requirements, and with respect to which the Applicant has satisfied the requirements, set forth in the Federal Register on July 16, 1999 (64 FR 38510), as such requirements may be amended from time to time;

Eligible Resident means an individual who resides in a Distressed Community;

Equity Investment means financial assistance provided by an Applicant or its Subsidiary to a CDFI, which CDFI meets such criteria as set forth in the applicable NOFA, in the form of a grant, a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, or any other investment deemed to be an Equity Investment by the CDFI Fund;

Equity-Like Loan means a loan provided by an Applicant or its Subsidiary to a CDFI, and made on such terms that it has characteristics of an Equity Investment that meets such criteria as set forth in the applicable NOFA;

Financial Services means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, new branches, and other comparable services as may be specified by the CDFI Fund in the applicable NOFA, that are provided by the Applicant to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in the Distressed Community;

Geographic Units means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, block groups, and Indian Areas or Native American Areas (as each is defined by the U.S. Bureau of the Census), or other areas deemed appropriate by the CDFI Fund;

Home Improvement Loan means an advance of funds, either unsecured or secured by a one-to-four family residential property, the proceeds of which are used to improve the borrower's primary residence, where such borrower is an Eligible Resident who is Low- and Moderate-Income;

Indian Reservation means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

Individual Development Account (or IDA) means a special savings account that matches the deposits of Low- and Moderate-Income individuals and that enables Low-and Moderate-Income individuals to save money for a particular financial goal including, but not limited to, and as determined by the CDFI Fund: buying a home, paying for post-secondary education, or starting or expanding a small business;

Insured Depository Institution means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

Integrally Involved means, for a CDFI Partner, having provided or transacted the percentage of financial transactions or dollars (i.e., loans or Equity Investments), or Development Service activities, in the Distressed Community identified by the Applicant or the CDFI Partner, as applicable, or having attained the percentage of market share for a particular product in a Distressed Community, set forth in the applicable NOFA;

Low- and Moderate-Income means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban

Development, with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20));

Metropolitan Area means an area designated as such (as of the date of the BEA Program application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e)(3), 31 U.S.C. 1104(d), and Executive Order 10253 (3 CFR, Part 1949–1953 Comp., p. 758), as amended;

Notice of Funding Availability (or NOFA) means the public notice of funding opportunity that announces the availability of BEA Program Award funds for a particular funding round and that advises prospective Applicants with respect to obtaining application materials, establishes application submission deadlines, and establishes other requirements or restrictions applicable for the particular funding round;

Priority Factor means a numeric value assigned to each type of activity within each category of Qualified Activity, as established by the CDFI Fund in the applicable NOFA. A priority factor represents the CDFI Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity;

Project Investment means providing financial assistance in the form of a purchase of stock, limited partnership interest, other ownership instrument, or a grant to an entity that is Integrally Involved in a Distressed Community and formed for the sole purpose of engaging in a project or activity (approved by the CDFI Fund), including Affordable Housing Development Loans, Affordable Housing Loans, Commercial Real Estate Loans, and Small Business Loans;

Qualified Activities means CDFI Related Activities, Distressed Community Financing Activities, and Service Activities;

Recipient means an Applicant that receives a BEA Program Award pursuant to this part and the applicable NOFA;

Service Activities means the following activities: Deposit Liabilities; Financial Services; Community Services; Targeted Financial Services; and Targeted Retail Savings/Investment Products;

Small Business Loan means an origination of a loan used for commercial or industrial activities (other than an Affordable Housing Loan, Affordable Housing Development Loan, Commercial Real Estate Loan, Home Improvement Loan) to a business or farm that meets the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) and is located in a Distressed Community;

Small Dollar Consumer Loan means affordable consumer lending products that serve as available alternatives in the marketplace for individuals who are Eligible Residents and meet criteria further specified in the applicable NOFA;

State means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

Subsidiary has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a Subsidiary of any Insured Depository Institution or any depository institution holding company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation;

Targeted Financial Services means ETAs, IDAs, and such other banking products targeted to Eligible Residents who meet Low- and Moderate-Income requirements, as may be specified by the CDFI Fund in the applicable NOFA;

Targeted Retail Savings/Investment Products means certificates of deposit, mutual funds, life insurance, and other similar savings or investment vehicles targeted to Eligible Residents who meet Low- and Moderate-Income requirements, as may be specified by the CDFI Fund in the applicable NOFA;

Technical Assistance means the provision of consulting services, resources, training, and other nonmonetary support relating to an organization, individual, or operation of a trade or business, as may be specified by the CDFI Fund in the applicable NOFA; and

Unit of General Local Government means any city, county town, township, parish, village, or other general-purpose political subdivision of a State or Commonwealth of the United States, or general-purpose subdivision thereof, and the District of Columbia.

§ 1806.104 Uniform Administrative Requirements; Waiver authority.

(a) Uniform Administrative Requirements. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Administrative Requirements), codified by the Department of the Treasury at 2 CFR Part 1000, apply to awards, regardless of type of award Recipient, made pursuant to this part.

(b) Waiver authority. The CDFI Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver will be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the CDFI Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of

general applicability, the CDFI Fund will publish notification of granted waivers in the Federal Register.

§ 1806.105 OMB control number.

The collection of information requirements in this Part have been approved by the Office of Management and Budget and assigned the applicable, approved OMB Control Number associated with the CDFI Fund under 1559-0005.

Subpart B - Eligibility

§ 1806.200 Applicant Eligibility

General requirements. An entity that is an Insured Depository Institution is eligible to apply for a BEA Program Award if the CDFI Fund receives a complete BEA Program Award application by the deadline set forth in the applicable Notice of Funding Availability (NOFA). Additional eligibility requirements are set forth in the applicable NOFA.

Subpart C - Use of Funds / Qualified Activities

§ 1806.300 Qualified Activities.

To receive a BEA Program Award, an Insured Depository Institution must increase its Qualified Activities within the period of time set forth in the applicable NOFA. Recipients of BEA Program Awards must also use their payments for Qualified Activities, as described in the applicable NOFA and the Award Agreement.

§ 1806.301 Restrictions of use of award.

A Recipient may not distribute BEA Program Award funds to an Affiliate without the CDFI Fund's prior written consent.

Subpart D - Award Determinations

§ 1806.400 General.

The amount of a BEA Program Award shall be based on the Applicant's increases in Qualified Activities from the Baseline Period to the Assessment Period, as set forth in the applicable NOFA.

§ 1806.401 Community eligibility and designation.

(a) General. If an Applicant proposes to carry out Service Activities or Distressed Community Financing Activities, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities. The Applicant may designate different Distressed Communities for each category of activity. If an Applicant proposes to carry out CDFI Support Activities, the Applicant shall provide evidence that the CDFI it is proposing to support is Integrally Involved in a Distressed Community as specified in the applicable NOFA.

(b) Minimum area and eligibility requirements. A Distressed Community must meet the following minimum area and eligibility requirements:

(1) Minimum area requirements. A Distressed Community:

(i) Must be an area that is located within the jurisdiction of one (1) Unit of General Local Government;

(ii) The boundaries of the area must be contiguous; and

(iii) The area must:

(A) have a population, as determined by the most recent US Bureau of the Census data available, of not less than 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater; or

(B) have a population, as determined by the most recent US Bureau of the Census data available, of not less than 1,000 in any other case; or

(C) Be located entirely within an Indian Reservation.

(2) Eligibility requirements. A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Eligible Residents have incomes that are less than the national poverty level, as published by the U.S. Bureau of the Census or in other sources as set forth in guidance issued by the CDFI Fund;

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recently published data, including estimates of unemployment developed using the U.S. Bureau of Labor Statistics' Census-Share calculation method, or in other sources as set forth in guidance issued by the CDFI Fund; and

(iii) Such additional requirements as may be specified by the CDFI Fund in the applicable NOFA.

(c) Area designation. An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements set forth in paragraph (b) of this section; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section, provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) Designation. The CDFI Fund will provide a prospective Applicant with data and other information to help it identify areas eligible to be designated as a Distressed Community. Applicants shall submit designation materials as instructed in the applicable NOFA.

§ 1806.402 Measuring and reporting Qualified Activities.

(a) General. An Applicant may receive a BEA Program Award for engaging in any of the following categories of Qualified Activities during an Assessment Period: CDFI Related Activities, Distressed Community Financing Activities, or Service Activities. The CDFI Fund may further qualify such Qualified Activities in the applicable NOFA, including such additional geographic and transaction size limitations as the CDFI Fund deems appropriate.

(b) Reporting Qualified Activities. An Applicant should report only its Qualified Activities for the category for which it is seeking a BEA Program Award.

(1) If an Applicant elects to apply for an award in either the CDFI Related Activities category or the Distressed Community Financing Activities category, it must report on all types of activity within that category, unless the Applicant can provide a reasonable explanation, acceptable to the CDFI Fund in its sole discretion, as to why it cannot report on all activities in such category.

(2) If an Applicant elects to apply for an award in the Service Activities category, it may elect not to report each type of activity within the Service Activities category.

(c) Area served. CDFI Related Activities must be provided to a CDFI. CDFI Partners that are the recipients of CDFI Support Activities must demonstrate that they are Integrally Involved in a Distressed Community. Service Activities and Distressed Community Financing Activities must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

- (1) Undertaken in the Distressed Community; or
- (2) Provided to Eligible Residents who meet Low- and Moderate-Income requirements or enterprises that are Integrally Involved in the Distressed Community.

(d) Certain Limitations on Qualified Activities. Activities funded with the proceeds of Federal funding or tax credit programs are ineligible for purposes of calculating or receiving a Bank Enterprise Award. Please see the applicable NOFA for each funding round's limitations on Qualified Activities. Qualified Activities shall not include loans to or investments in those business types set forth in the Uniform Administrative Requirements.

(e) Measuring the Value of Qualified Activities. Subject to such additional or alternative valuations as the CDFI Fund may specify in the applicable NOFA, the CDFI Fund will assess the value of:

(1) Equity Investments, Equity-Like Loans, loans, grants and certificates of deposits, at the original amount of such Equity Investments, Equity-Like Loans, loans, grants or certificates of deposits. Where a certificate of deposit matures and is then rolled over during the Baseline Period or the Assessment Period, as applicable, the CDFI Fund will assess the value of the full amount of the rolled-over deposit. Where an existing loan is refinanced (meaning, a new loan is originated to pay off an existing loan, whether or not there is a change in the applicable loan terms), the CDFI Fund will only assess the value of any increase in the principal amount of the refinanced loan;

(2) Project Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant;

(3) Deposit Liabilities at the dollar amount deposited as measured by comparing the net change in the amount of applicable funds on deposit at the Applicant during the Baseline Period with the net change in the amount of applicable funds on deposit at the Applicant during the Assessment Period, as described in paragraphs (e)(3)(i) and (ii) of this section:

(i) The Applicant shall calculate the net change in deposits during the Baseline Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period; and

(ii) The Applicant shall calculate the net change in such deposits during the Assessment Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period;

(4) Financial Services and Targeted Financial Services based on the predetermined amounts as set forth by the CDFI Fund in the applicable NOFA; and

(5) Financial Services (other than those for which the CDFI Fund has established a predetermined value), Community Services, and CDFI Support Activities consisting of Technical Assistance based on the administrative costs of providing such services.

(f) Closed transactions. A transaction shall be considered to have been closed and carried out during the Baseline Period or the Assessment Period if the documentation evidencing the transaction:

(1) Is executed on a date within the applicable Baseline Period or Assessment Period, respectively; and

(2) Constitutes a legally binding agreement between the Applicant and a borrower or investee, which agreement specifies the final terms and conditions of the transaction, except that any contingencies included in the final agreement must be typical of such transaction and acceptable (both in the judgment of the CDFI Fund); and

(3) An initial cash disbursement of loan or investment proceeds has occurred in a manner that is consistent with customary business practices and is reasonable given the nature of the transaction (as determined by the CDFI Fund), unless it is normal business practice to make no initial disbursement at closing and the Applicant demonstrates that the borrower has access to the proceeds, subject to reasonable conditions as may be determined by the CDFI Fund.

(g) Reporting period. An Applicant must only measure the amount of a Qualified Activity that it reasonably expects to disburse to an investee, borrower, or other recipient within one year of the end of the applicable Assessment Period, or such other period as may be set forth by the CDFI Fund in the applicable NOFA.

§ 1806.403 Estimated award amounts.

(a) General. An Applicant must calculate and submit to the CDFI Fund an estimated award amount as part of its BEA Program Award application.

(b) Award percentages. The CDFI Fund will establish the award percentage for each category of Qualified Activities in the applicable NOFA. Applicable award percentages for Qualified Activities undertaken by Applicants that are CDFIs will be equal to three times the award percentages for Qualified Activities undertaken by Applicants that are not CDFIs.

(c) Calculating the estimated award amount. The estimated award amount for each category of Qualified Activities will be equal to the applicable award percentage of the increase in the weighted value of such Qualified Activities between the Baseline Period and Assessment Period. The weighted value of the applicable Qualified Activities shall be calculated by:

(1) Subtracting the Baseline Period value of such Qualified Activity from the Assessment Period value of such Qualified Activity to yield a remainder; and

(2) Multiplying the remainder by the applicable Priority Factor (as set forth in the applicable NOFA).

(d) Estimated award eligibility review. The CDFI Fund will determine the eligibility of each transaction for which an Applicant has applied for a BEA Program Award. Based upon this review, the CDFI Fund will calculate the actual award amount for which such Applicant is eligible.

§ 1806.404 Selection process; actual award amounts.

(a) Sufficient funds available to cover estimated awards. All BEA Program Awards are subject to the availability of funds. If the amount of appropriated funds available during a funding round is sufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, and an Applicant meets all of the program requirements specified in this part, then such Applicant shall receive an actual award amount that is calculated by the CDFI Fund in the manner specified in § 1806.403.

(b) Insufficient funds available to cover estimated awards. If the amount of funds available during a funding round is insufficient to cover all estimated award amounts for which Applicants are eligible, in the CDFI Fund's determination, then the CDFI Fund will select Recipients and determine actual award amounts based on the process described in subsection 1806.404(c) and any established maximum dollar amount of awards that may be awarded for the Distressed Community Financing Activities category, as described in the applicable NOFA.

(c) Priority of awards. In circumstances where there are insufficient funds to cover estimated awards, the CDFI Fund will rank Applicants based on whether the Applicant is a CDFI or a non-CDFI, and in each category of Qualified Activity (e.g., Service Activities) according to the priorities described in this paragraph (c). Selections within each priority category will be

based on the Applicants' relative rankings within each category, and based on whether the Applicant is a CDFI or a non-CDFI, subject to the availability of funds.

(1) First priority. If the amount of funds available during a funding round is insufficient for all estimated award amounts, first priority will be given to CDFI Applicants that engaged in CDFI Related Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities ranked in the ratio as set forth in the applicable NOFA.

(2) Second priority. If the amount of funds available during a funding round is sufficient for all first priority Applicants but insufficient for all remaining estimated award amounts, second priority will be given to CDFI Applicants that engaged in Distressed Community Financing Activities, followed by non-CDFI Applicants that engaged in CDFI Related Activities, ranked in the ratio as set forth in the applicable NOFA.

(3) Third priority. If the amount of funds available during a funding round is sufficient for all first and second priority Applicants, but insufficient for all remaining estimated award amounts, third priority will be given to CDFI Applicants that engaged in Service Activities, followed by non-CDFI Applicants that engaged in Service Activities, ranked in the ratio as set forth in the applicable NOFA.

(d) Calculating actual award amounts. The CDFI Fund will determine actual award amounts based upon the availability of funds, increases in Qualified Activities from the Baseline to the Assessment Period, and an Applicant's priority ranking. If an Applicant receives an award for more than one priority category described in this section, the CDFI Fund will combine the award amounts into a single BEA Program Award.

(e) Unobligated or deobligated funds. The CDFI Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) To select Applicants not previously selected, using the calculation and selection process contained in this part;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

(f) Limitation. The CDFI Fund, in its sole discretion, may deny or limit the amount of a BEA Program Award for any reason.

§ 1806.405 Applications for BEA Program Awards.

(a) Notice of funding availability; applications. Applicants must submit applications for BEA Program Awards in accordance with this section and the applicable NOFA. An Applicant's application must demonstrate a realistic course of action to ensure that it will meet the requirements described in subpart D within the period set forth in the applicable NOFA. Detailed application content requirements are found in the related application and applicable NOFA. The CDFI Fund will not disburse an award to an Applicant before it meets the eligibility requirements described in the applicable NOFA. The CDFI Fund shall require an Applicant to meet any additional eligibility requirements that the CDFI Fund deems appropriate. After receipt of an application, the CDFI Fund may request clarifying or technical information related to materials submitted as part of such application and/or to verify that Qualified Activities were carried out in the manner prescribed in this Part. The CDFI Fund, in its sole discretion, shall determine whether an applicant fulfills the requirements set forth in this part and the applicable NOFA.

(b) Application contents. An application for a BEA Program Award must contain:

(1) A completed worksheet that reports the increases in Qualified Activities actually carried out during the Assessment Period as compared to those carried out during the Baseline

Period. If an Applicant has merged with another institution during the Assessment Period, it must submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that reports the activities of the merged institutions. If such a merger is unexpectedly delayed beyond the Assessment Period, the CDFI Fund reserves the right to withhold distribution of a BEA Program Award until the merger has been completed;

(2) A report of Qualified Activities that were closed during the Assessment Period. Such report shall describe the original amount, census tract served, dates of execution, initial disbursement, and final disbursement of the instrument;

(3) Documentation of Qualified Activities that meets the required thresholds and conditions described in § 1806.402(f) and the applicable NOFA;

(4) Information necessary for the CDFI Fund to complete its environmental review requirements pursuant to part 1815 of this chapter;

(5) Certifications, as described in the applicable NOFA and BEA Program Award application, that the information provided to the CDFI Fund is true and accurate and that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements;

(6) In the case of an Applicant that engaged in Service Activities, or Distressed Community Financing Activities, the Applicant must confirm, by submitting documentation as described in the applicable NOFA and BEA Program application, the Service Activities or Distressed Community Financing Activities were provided to:

- (i) Eligible Residents that resided in a Distressed Community, or
- (ii) A business located in a Distressed Community.

(7) Information that indicates that each CDFI to which an Applicant has provided CDFI Support Activities is Integrally Involved in a Distressed Community, as described in the applicable NOFA and BEA Program application; and

(8) Any other information requested by the CDFI Fund, or specified by the CDFI Fund in the applicable NOFA or the BEA Program application, in order to document or otherwise assess the validity of information provided by the Applicant to the CDFI Fund.

Subpart E - Terms and Conditions of Assistance

§ 1806.500 Award Agreement; sanctions.

(a) General. After the CDFI Fund selects a Recipient, the CDFI Fund and the Recipient will enter into an Award Agreement. In addition to the requirements of the Uniform Administrative Requirements, the Award Agreement will require that the Recipient:

(1) Must carry out its Qualified Activities in accordance with applicable law, the approved BEA Program application, and all other applicable requirements;

(2) Must comply with such other terms and conditions that the CDFI Fund may establish;

(3) Will not receive any BEA Program Award payment until the CDFI Fund has determined that the Recipient has fulfilled all applicable requirements;

(4) Must comply with performance goals that have been established by the CDFI Fund. Such performance goals will include measures that require the Recipient to use its BEA Program Award funds for Qualified Activities; and

(5) Must comply with all data collection and reporting requirements. Each Recipient must submit to the CDFI Fund such information and documentation that will permit the CDFI Fund to review the Recipient's progress in satisfying the terms and conditions of its Award Agreement, including:

(i) Annual report. Each Recipient shall submit to the CDFI Fund at least annually and within 90 days after the end of each year of the Recipient's performance period, an annual report that will provide data that, among other things, demonstrates the Recipient's compliance with its performance goals (including a description of any noncompliance), its uses of the BEA Program Award funds, and the impact of the BEA Program and the CDFI industry. Recipients are responsible for the timely and complete submission of the annual report.

(ii) Financial statement. A Recipient is not required to submit its financial statement to the CDFI Fund. The CDFI Fund may obtain the necessary information from publicly available sources.

(b) Sanctions. In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Recipient, the CDFI Fund may terminate, reduce, or recapture the award, bar the Recipient and/or its Affiliates from applying for an award from the CDFI Fund for a period to be decided by the CDFI Fund in its sole discretion, and pursue any other available legal remedies.

(c) Compliance with other CDFI Fund awards. In the event that an Applicant, Recipient, or its Subsidiary or Affiliate is not in compliance, as determined by the CDFI Fund, with the terms and conditions of any CDFI Fund award, the CDFI Fund may, in its sole discretion, bar said Applicant or Recipient from applying for future BEA Program Awards or withhold payment (either initial or subsequent) of BEA Program Award funds.

(d) Notice. Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund will provide the Recipient with written notice of the proposed sanction and an opportunity to respond. Nothing in this section, however, will provide a

Recipient with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.501 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Recipient must comply with all applicable Federal, State, and local laws, regulations (including but not limited to the Uniform Administrative Requirements, ordinances, and Executive Orders).

§ 1806.502 Fraud, waste, and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste, or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.503 Books of account, records, and government access.

(a) A Recipient shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the CDFI Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Recipient's offices and facilities, and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

(b) The Award Agreement provides that the provisions of the Act, this part, and the Award Agreement are enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this

paragraph (b) precludes the CDFI Fund from directly enforcing the Award Agreement as provided for under the terms of the Act.

(c) The CDFI Fund will notify the Appropriate Federal Banking Agency before imposing any sanctions on a Recipient that is examined by or subject to the reporting requirements of that agency. The CDFI Fund will not impose a sanction described in section 1806.500(b) if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the CDFI Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the Recipient; or

(ii) Impede or interfere with an enforcement action against that Recipient by the

Appropriate Federal Banking Agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (c)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (c)(3) of this section would be as effective as the sanction proposed by the CDFI Fund in securing compliance and deterring future noncompliance.

(d) Prior to imposing any sanctions pursuant to this section or an Award Agreement, the CDFI Fund shall, to the maximum extent practicable, provide the Recipient with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Recipient to any formal or informal hearing or comparable proceeding not otherwise

required by law.

§ 1806.504 Retention of records.

A Recipient must comply with all record retention requirements as set forth in the Uniform Administrative Requirements.

Dated: April 30, 2015

Mary Ann Donovan,

Director,

Community Development Financial Institutions Fund

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